

No. 9/5/84-6Lab/4136.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of The Haryana Roadways, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK
Reference No. 90 of 83

between

SHRI SOM NATH, WORKMAN AND THE MANAGEMENT OF THE HARYANA ROADWAYS,
ROHTAK

Shri M.C. Bhardwaj, A.R. for the workman.

Shri S.C. Singla, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Som Nath and the management of The Haryana Roadways, Rohtak to this Court; for adjudication,—*vide* Labour Department Gazette Notification No. ID/RTK/29-83/30911-16, dated 30th June, 1983:—

Whether the termination of service of Shri Som Nath was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed as a Mechanic with the respondent at Rohtak and his services were terminated by the respondent on 19th May, 1976 on the ground of absence from duty without leave and before passing the impugned order, no opportunity was given to him in defence and no enquiry was held in that behalf. So, it is alleged, that the order of termination was illegal and void and non-existent in the eyes of law. *Inter alia* it is alleged that his services with the respondent on the date of termination was less than 20 years.

3. In the reply filed by the respondent, the preliminary objections taken are that the reference is bad on account of delay and laches and that the reference made to the Court is bad in law, because earlier the Government of Haryana declined to make a reference of the dispute to the Court, but later on, choose to review its order without affording any opportunity of being heard to the respondent. On merits, it is admitted that the workman was employed as Mechanic on 1st September, 1964 and that his services were terminated,—*vide* order dated 19th May, 1976. It is further alleged that the applicant had applied for leave from 1st May, 1975 to 31st July, 1975 and the same was sanctioned upto that date but the applicant did not resume his duty after the expiry of leave period and so, the applicant was directed to resume his duty,—*vide* telegram issued on 12th September, 1975 and 21st November, 1975 but the workman did not comply and so, the respondent was constrained to issue a proclamation in a Newspaper for the appearance of the workman but the workman again failed to resume his duty and in this situation order of termination was passed on the ground of abandonment of employment by the workman. So, there is a prayer for answering the reference against the workman.

4. In the replication filed by the workman, various pleas taken by the respondent has been controverted and so the parties contested the reference on the following issues framed on 3rd July, 1984:—

1. Whether the reference is bad for delay and laches? OPR.
2. Whether the reference is bad in law? OPR.
3. Whether the reference is barred by limitation? OPR.
4. Whether the termination of services of Shri Som Nath was justified and in order? If not, to what relief is he entitled?

5. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri J.P. Srivastava, Assistant, office of the Labour Commissioner, Haryana, Chandigarh, MW-2 Shri Ran Singh, Clerk, Haryana Roadways, Bhiwani, MW-3 Shri Ram Avtar, Press Facility Assistant, office of the Directorate of Publication, Government of Haryana, Chandigarh and MW-4 Shri Har Kishan, Clerk, Haryana Roadways, Rohtak. On the other hand, the workman appeared as his own witness as WW-1.

6. The learned Authorised Representative of the parties heard. Documents perused. My findings on the issues framed are as below:—

Issues No. 1&3

7. The learned Authorised Representative of the respondent Shri Singla, forcefully contended that the reference is bad being much delayed, because order of termination was passed on 19th May, 1976 and the demand

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notice for the first time was raised on 20th September, 1982 i.e. after a lapse of 6½ years. There is nothing in the demand notice or the Claim Statement filed by the workman in the Court as to why he slumbered over his termination for such a long period of more than 6½ years. There is no denying the fact that no limitation has been prescribed for raising a demand notice or making a reference to the Court any industrial dispute between the parties but their Lordships of the Supreme Court of India have laid down in 1959 (II) LLJ 26 between **Shalimar Works Limited and its Workman** that a period more than 3½ years would be frowned upon by the Courts. The ratio of the authority is that in case of much delayed reference, reinstatement is ordered, the same puts the employed to untold hardships, because in that situation the employer is constrained to retrench the employees employed during the period of termination of the workman and the award of the Labour Court or the Tribunal. The Court will view a delayed reference sympathetically in case, there is a cogent explanation on behalf of the workman as to why he could not raise the demand notice within reasonable time. In the present case, no such explanation has been given by the workman in the demand notice or claim statement filed in the Court. In this view of the matter, it can be safely held that this reference is a delayed one and the reinstatement of the workman cannot be ordered.

8. Another ground of attack on behalf of the respondent was that the Government was not right in making a reference to the Court after declining to make the same on the earlier occasion, because no notice was given to the respondent before making the present reference. This contention is not tenable in view of the law laid down in 1982 (II) LLJ 373, in which, it was held by their Lordships that there is no obligation on the part of the Government to hear an employer on a view taken different from the one taken by it earlier in refusing to refer a dispute.

9. A kindred contention raised on behalf of the respondent was that in the present case a reference was made on the intervention of the Labour Minister, Government of Haryana and so also, the same is bad in law. In my opinion, this contention has no force, because it is for the Government machinery to arrive at the decision and since the reference has been made by the competent authority, so, the same cannot be held to be bad in law on that account.

10. So, issue No. 1 is answered against the workman, issue No. 2 against the management and issue No. 3 is left undecided, because no limitation is prescribed under law in matter of industrial disputes under the said Act.

Issue No. 4

11. The learned Authorised Representative of the respondent Shri Singla submitted that what else could be done by the management to procure the presence of the workman, because the management had given two telegrams to the workman urging him to resume his duties and when this mode of service failed, it chose to get a proclamation issued in the Newspaper through publication Division of the Government of Haryana. So much, so good. The question would be as to whether the respondent could have terminate the services of the workman without holding a domestic enquiry regarding his alleged absenteeism from duty without leave. It is on record that the workman proceeded on leave after initially getting the same sanctioned for one month and the leave was further extended upto 31st July, 1975. The plea of the workman was that after getting his leave sanctioned he went to his village Jammu, where he found his mother indisposed and he took her for treatment to Riasi and also applied for further extension of leave. Ultimately he returned to resume his duties in the month of November, 1976. The fact that the workman had applied for extension of leave beyond July, 1975 is borne out from the copy of the telegram Ex. MW2/5, dated 12th September, 1975 placed upon the file by the management. So, the plea of the respondent that beyond 31st July, 1975 the workman never applied for further extension of leave is palpably false, otherwise there was no question of the leave application being rejected and a direction was given to the workman to resume his duty immediately. Even if, it is believed that the workman remained absent without leave, even than his services could not have been terminated without holding a domestic enquiry in that behalf, but admittedly no domestic enquiry was held by the respondent. It is admitted case of the respondent that the workman was granted leave upto 31st July, 1975 but a noting by a clerk of the respondent Ex. MW-2/7, dated 10th December, 1975 is against the record, because therein it is mentioned that the workman has been absent from duty since 1st June, 1975. The learned Authorised Representative of the respondent could not explain this discrepancy. So, I find that the respondent was not justified in terminating the services of the workman on the ground of absenteeism alone without holding a domestic enquiry, in which, the workman would have been again given an opportunity to offer his defence. So, the order of termination is set aside being void *ab initio* and this issue is returned in favour of the workman.

12. In the light of my decision on issue No. 1 that the reference is bad for delay and laches, no relief of reinstatement can be granted to the workman. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 30th April, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 90/83/767, dated 11th May, 1985.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.